



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation on July 15, 2003

**NOTICE OF ACTION TAKEN -- DOCKET OST 2003-15485**

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This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Applicant: LUFTHANSA CITYLINE GmbH

Date Filed: June 20, 2003

Relief requested: Exemption under 49 U.S.C. 40109 to permit Lufthansa CityLine to conduct, for a period of two years, scheduled foreign air transportation of persons, property, and mail, by displaying the code of United Air Lines on flights operated by Lufthansa CityLine wholly within Germany, and, in addition, between points in Germany and points in third countries.

Statement of Authorization under 14 CFR Part 212 to permit Lufthansa CityLine to carry United Air Lines' code, for an indefinite duration, on flights operated by Lufthansa CityLine wholly within Germany, and, in addition, between points in Germany and points in third countries.

If renewal, date and citation of last action: New authority.

Applicant representative: Ali M. Stoeppelwerth, 202-663-6000

DOT analyst: Allen F. Brown, 202-366-2405

Responsive pleadings: None.

**DISPOSITION**

Action: Approved, subject to conditions (see below).

Action date: July 15, 2003

Effective dates of authority granted: The exemption authority granted to the applicant is effective July 15, 2003, through July 15, 2005. The Statement of Authorization granted to the applicant is effective July 15, 2003, for an indefinite duration.

Basis for approval: The authority is encompassed by the United States-Germany Air Transport Agreement, as amended. We found, based on the record, that Lufthansa CityLine is substantially owned and effectively controlled by citizens of Germany, properly licensed by its homeland, and operationally and financially qualified to undertake the proposed operations.

Conditions: Except to the extent exempted or waived, the exemption authority granted to Lufthansa CityLine is subject to the terms, conditions, and limitations of our Foreign Air Carrier Standard Exemption Conditions.

The code-share authority that we granted to Lufthansa CityLine is subject to the following conditions: 1) This Statement of Authorization will remain in effect only as long as Lufthansa CityLine and United continue to hold the necessary underlying authority to operate the code-share services at issue and their code-share agreement providing for these operations remains in effect. 2) Lufthansa CityLine and/or United must notify the Department no later than 30 days before they begin any new code-share service under the code-share services authorized here. Such notice shall identify the market(s) to be served, and the date on which the service will begin. Such notices should be filed in Docket OST-2003-15485. 3) Lufthansa CityLine and/or United must promptly notify the Department (Office of International Aviation) if the subject agreement providing for these operations is no longer effective or the carriers decide to cease operating any or all of the approved services. (We expect this notice to be received within ten days of such noneffectiveness or of such decision and filed in Docket 2003-15485). 4) The code-share operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. 5) Notwithstanding any provisions in the contract between the subject carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be

sold in the name of the carrier holding out the service in computer reservation systems and elsewhere; that the carrier selling such transportation (that is, the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected. 6) The operating carrier shall not permit the code of its U.S. code-share partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition. 7) The authority to operate to third countries is subject to the condition that any service provided under the statement of authorization shall be consistent with all applicable agreements between the United States and the foreign countries involved. Furthermore, i) nothing in the award of this blanket statement of authorization should be construed as conferring upon Lufthansa CityLine and United rights (including code-share, fifth freedom intermediates and/or beyond rights) to serve markets where U.S. carrier rights are limited unless Lufthansa CityLine and United notify us of their intent to serve such a market and unless and until the Department has completed any necessary carrier-selection procedures to determine which carrier(s) should be authorized to exercise such rights (the 30-day notice provision set forth above in this paragraph can be used for this notification); and ii) should there be a request by any carrier to use the limited-entry route rights that are included in Lufthansa CityLine's and United's authority by virtue of the blanket statement of authorization granted here, but that are not then being used by Lufthansa CityLine and United, the holding of such authority will not be considered as providing any preference for Lufthansa CityLine and United in a competitive carrier-selection proceeding to determine which carrier(s) should be entitled to use the authority at issue; and 8) The code-share authority granted here is specifically conditioned so that neither carrier shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

**Action taken by: Paul L. Gretch, Director  
Office of International Aviation**

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Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:  
[http://dms.dot.gov/reports/reports\\_aviation.asp](http://dms.dot.gov/reports/reports_aviation.asp)*